IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

MFA.No. 1108 of 2001

OPMV.815/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
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APPELLANT:PETITIONER

SUNIL ALIAS MANI, S/o PAILY, MOOLASSERIL HOUSE,
VELAMBUKANDAM, P.O. ECHOM, WAYANAD

BY ADV. SRI.LALJI P.THOMAS

RESPONDENTS:RESPONDENTS
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1. MOIDEEN, S/o MAMMADEESA, NADUTHODUKA HOUSE,
MADAKKIMALA P.O., MUTTIL AMSOM, (DRIVER OF JEEP
NO KL-11B/322, D.L. No 61/88/W)
2. K.P. PRABHAKARAN, FATHER'S NAME NOT KNOWN,
KATHANGATH HOUSE, KIDANGANADU POST,
S.BATHERY(OWNER OF KL 11B/322 JEEP)
3. UNITED INDIA INSURANCE COMPANY LIMITED,
BRANCH OFFICE, NOORANAL BUILDING,
S. BATHERY (INSURER OF JEEP NO KL-11B/322)
4. P.N. SURESH BABU, S/o M. NARAYANAN,
PULIYANMAKKAL HOUSE, P.O. KOLERY,
(OWNER OF JEEP NO KL 108/1983)
5. P.K.MOHANAN S/o M.KUNHIRAMAN
MOOLAVAYAL HOUSE, EACHOM P.O.
(DRIVER OF JEEP NO KL-108/1983)
6. NEW INDIA ASSURANCE COMPANY LTD, KALPETTA
(INSURER OF JEEP NO KL-108/1983)

R6 BY ADV. SRI.JOHN KOSHY
R3 BY ADV. SMT.NARAYANIKUTTY CHETTOOR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 01/01/2007, THE COURT ONTHE SAME DAY DELIVERED THE
FOLLOWING:

K.S. RADHAKRISHNAN & M.N. KRISHNAN, JJ.

M.F.A. No 1108 of 2001

Dated: 1st January 2007

JUDGMENT

Krishnan,J.

This appeal is preferred by the claimant in O.P. (M.V) No 815 of 1994 of the Claims Tribunal, Kalpetta. Claimant was injured in a road accident and the Tribunal has awarded a compensation of Rs 7,900/- with 9% interest. Since no fault liability of Rs 25,000/- has been granted the Tribunal did not make the Insurance Company liable to pay any further amount. It is against that decision the present appeal is filed.

2. A perusal of the award would reveal that the claimant had sustained crush injury on the right little finger with compound communited fracture of proximal phalanx. He had also dislocation and fracture of the joint of right ring finger and there were lacerated wounds and bone pieces were protruding. He had undergone

treatment in Priya Nursing Home as inpatient for five days. He had also produced Ext.A6 disability certificate. Since the doctor was not examined the Tribunal did not accept it and thereby granted compensation of Rs 7,900/-. Considering the nature of the injuries we feel that the award of the Tribunal is grossly inadequate to compensate the claimant for the injuries sustained. Injured was aged 22 years at the time of accident and the Tribunal instead of taking the notional income at Rs 1,250/- per month took only Rs 700/- as the income. Therefore, we modify it and fix it at Rs 1,250/- and under that head claimant will be entitled to additional compensation of Rs 1,100/-. Towards transport expenses only Rs 300/- was claimed whereas the Tribunal has awarded Rs 100/-. Towards additional compensation we award Rs 200/- under that head. For extra nourishment the Tribunal awarded a sumof Rs 100/-. We enhance it by Rs 400/-. The Tribunal has awarded only Rs 200/- towards medical expenses. We feel that at least an amount of Rs 2,000/- has to be granted considering the period of treatment. We therefore award additional amountof Rs 1,800/- under that head. From the nature of the injuries it is seen that the claimant had suffered compound communited fracture of proximal phalanx

with protrusion of bones and deep lacerated wound on the right middle finger which had affected him in doing any work and therefore we feel that adequate compensation of Rs 10,000/- has to be given under the head of pain and suffering. We therefore award an additional compensation of Rs 5,000/- under that head. The Tribunal has not considered the disability certificate at all. Even without the disability certificate it can be seen that the injuries sustained are on the right hand and there is dislocation and fracture at proximal interphalangal joint of right ring finger besides protrusion of bones. We feel this would affect his earning capacity partially and there would have been loss of amenities and enjoyment in life during that period. We are therefore inclined to grant an amount of Rs 10,000/- under that head. Therefore the total compensation which the claimant is entitled to would be Rs 26,400/-. Thus an additional compensation of Rs 18,500/- is granted. The award passed by the Tribunal is accordingly modified and the claimant is awarded a total compensation of Rs 26,500/- with 9% interest on the said sum from the date of petition till realisation and the Insurance Company is entitled to deduct the amount of Rs 25,000/- already paid under Section 140 of the M.V. Act towards compensation. Balance

amount shall be deposited within a period of two months from the date of receipt of a copy of this judgment.

SD/-
(K.S. RADHAKRISHNAN, JUDGE)

SD/-
(M.N. KRISHNAN, JUDGE)

01/01/2007
en/

TRUE COPY

(K.S. RADHAKRISHNAN, JUDGE)

(M.N. KRISHNAN, JUDGE)

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